

State v. Schroeder (20)

Case Number

S-18-0582

Case Audio

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October 30, 2019

Case Time

9:00 AM

Court Number

Johnson

Case Location

Lincoln

Court Type

District Court

Case Summary

S-18-0582 State of Nebraska v. Patrick Schroeder (Appellant)

Johnson County District Court, Judge Vicky L. Johnson

Attorneys: Sarah P. Newell (Nebraska Commission on Public Advocacy, for Appellant); James D. Smith (Solicitor General, Office of the Attorney General, for Appellee); Amicus brief submitted by ACLU of Nebraska and ACLU Foundation (Cassandra Stubbs, ACLU Foundation; Christopher L. Eickholt, Eickholt Law LLC; Amy A. Miller, ACLU of Nebraska)

Criminal: Sentencing; Death penalty

Proceedings below: The trial court found that Appellant waived his right to counsel and other trial rights and accepted his guilty pleas to first degree murder and use of a weapon to commit a felony. At a separate hearing, the court again found that he waived his right to counsel and to jury determination of the single aggravating factor freely, voluntarily, knowingly, and intelligently. After reappointing the Commission to advise Appellant regarding the sentencing phase procedure and his rights during that phase, the court again found that he waived his right to counsel freely, voluntarily, knowingly, and intelligently. During the penalty phase, the panel found that the State had proven the aggravating factor beyond reasonable doubt; it allowed the State to present evidence that is probative of the non-existence of statutory or non-statutory mitigating circumstances; it acknowledged that Appellant chose not to present any evidence or argument on his behalf; it found no statutory mitigating circumstances existed; it found two non-statutory mitigators; it found that the non-statutory mitigators did not approach or exceed the weight given to the aggravating circumstance; it found that a sentence of death was neither excessive nor disproportionate to the penalty imposed in similar cases; and it imposed a unanimous sentence of death for count I, and 40-50 consecutive years on count II, with no credit for time served. The court specifically found that the fact that the Appellant expressly welcomes a death sentence has not been considered by the panel. It is the law, and not the Appellant's wishes, that compels this panel's ultimate conclusion.

Issues: Appellant asserts that 1) the presiding judge committed plain error by allowing the State to introduce aggravating evidence under the guise of refuting mitigating evidence when the Appellant himself introduced no mitigating evidence, violating Appellant's rights under the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 3, 9, and 15 of the Nebraska Constitution; 2) the sentencing panel erred by failing to consider and weigh the mitigating evidence presented at the aggravation hearing and present the PSI report, violating Appellant's rights under the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 3, 9, and 15 of the Nebraska Constitution; 3) the sentencing panel erred by failing to request documents from DCS regarding Appellant's time in custody for the purpose of mitigation violating the Appellant's rights under the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 3, 9, and 15 of the Nebraska Constitution; 4) Nebraska's death penalty statutes are unconstitutional under both the Eighth and Fourteenth Amendments of the U.S. Constitution and Article I, §§ 3, 9, and 15 of the Nebraska Constitution as applied to Appellant because when a defendant refuses to introduce mitigating evidence, evidence regarding proportionality, or raise legal issues while exercising his right to represent himself *pro se* insufficient safeguards exist to prevent arbitrary results; and 5) the sentencing panel erred when balancing the aggravating circumstances against the mitigating circumstances and concluding that Appellant's case merits death when compared to similar cases which violates Appellant's rights under the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 3, 9, and 15 of the Nebraska Constitution.

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